IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8060 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANJOO TOMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8060 of 2004

MR KR JANI for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/09/2004

ORAL JUDGEMENT

By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 21-11-2003 passed by the District Magistrate, Kheda at Nadiad, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel for the petitioner, Mr.K.R.Jani, learned APP for the respondent Nos.1 to 3, Mrs.H.B.Punani and learned Addl. Central Govt. Standing Counsel for the respondent No.4.

3. It is submitted by Mr.K.R.Jani that the order of detention was passed on 21-11-2003 by the District Magistrate, Kheda at Nadiad and same was executed upon the detenu on 14-6-2004. Thereafter, the present petition was filed by the petitioner, who is the wife of the detenu. In pursuance of issuance of rule, learned APP, Mrs.H.B.Punani has appeared and filed the affidavit affirmed by Deputy Secretary to the Government of Gujarat, Shri H.C.Kadia on 24th August, 2004. At the time of hearing, additional affidavit affirmed by Smt.D.Thara, Ex.District Magistrate, Kheda at Nadiad who was the detaining authority along with the evidence to the effect that they have sent the translated copy first through courier and later through RPAD wherein the petitioner has come out with the say that at the time of serving the order of detention, the petitioner was not supplied with the translated copy. Hence, through wife of the detenu, a representation was made on 18-6-2004 and it was received by the authority on 19-6-2004. In this regard, he took me through page 29 of the compilation and xerox copy of the acknowledgment slip. According to him, though it was received by the authority on 19th, affidavit stated that it was received on 21st June, 2004 which is factually incorrect. It is submitted that translated copy was supplied in the language known to the detenu and it was received by him on 2nd July, 2004. He took me through ground No.10 of the petition at page 8 and argued that same was not properly dealt with by the person concerned who has filed the affidavit. In this connection, he has relied upon the case reported in AIR 1980 S.C. 1983 of Smt.Icchu Devi Choraria Vs. Union of India and Ors. He has also relied upon a judgment reported in AIR 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

4. It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, translated copies of the documents though relied upon by the authority in passing the impugned order of detention have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 21-11-2003 passed against the detenu Bhupendrasingh Tomar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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